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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 508/2018 & CM No. 17924/2018**

BIJENDER SINGH

..... Petitioner

Through: Mr. Manish Sharma, Ms. Neelima
Sharma & Mr. Karan, Advs.

versus

KALI CHARAN RATHORE

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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02.05.2018

The petition seeks to assail the order dated 24.02.2018 whereby the application of the respondent (defendant in the suit) under Order IX Rule 7 of the Code of Civil Procedure, 1908 has been allowed and he has been permitted to participate, the order dated 10.11.2016 whereby he was set *ex-parte* having been vacated. The counsel relies on decision dated September 10, 2008 of a learned single Judge in CM (M) 1031/2008 titled *Rajesh Kumar @ Raju vs. State & ors.* to contend that the application was highly belated and, therefore, should not have been entertained. The crucial facts which distinguish the case at hand from the one relied upon are that unlike there, in the present case there was no personal service of the respondent, his plea being that he had shifted address to the knowledge of the petitioner (plaintiff of the suit) and yet service of processes was attempted at his old address, he having been set *ex-parte* on the basis of publication under Order V Rule 20 CPC.

In the above facts and circumstances, when fraud is attributed to the petitioner, this Court declines to interfere with the judicial discretion exercised by the trial Court.

The petition and the accompanying application are dismissed.

R.K.GAUBA, J

MAY 02, 2018

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